

AMENDED IN ASSEMBLY MAY 11, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

AMENDED IN ASSEMBLY MARCH 30, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 609

Introduced by Assembly Member Swanson

February 16, 2011

An act to ~~amend Section 41320.1 of, and to add Section 41344.45 to,~~ the Education Code, relating to ~~education finance~~ *the Oakland Unified School District*.

LEGISLATIVE COUNSEL'S DIGEST

AB 609, as amended, Swanson. ~~Education Finance: Oakland Unified School District: audits; emergency loan deductions; audit fines and penalties.~~

(1) Existing law provides for emergency apportionments to school districts subject to specified conditions, including, in certain circumstances, the repayment of an emergency loan and the appointment by the Superintendent of Public Instruction of an administrator who would exercise the powers and responsibilities of the governing board of the school district. As a condition of receiving an emergency apportionment, existing law requires the Controller, or his or her designee, to cause an audit to be conducted on the books and accounts of the school district. Pursuant to these provisions, existing law appropriates \$100,000,000 from the General Fund to the Superintendent of Public Instruction for purposes of providing the Oakland Unified School District with an emergency loan, and requires the Controller to

conduct an audit for the fiscal year in which the loan moneys are disbursed and each fiscal year thereafter.

~~This bill would require an audit conducted as a condition of receiving an emergency apportionment to only be conducted to assist the administrator in ensuring that the school district returns to financial solvency, and would prohibit the audit from being conducted in a manner that would impose an additional financial burden on the school district. The bill would require the Oakland Unified School District to be released from any requirement to be subject to, or to pay for, fines or penalties imposed as a result of those emergency loan audits for a specified period the 2003–04 to 2008–09 fiscal years, inclusive. The bill would also require the Controller to calculate the total amount of emergency loan audit fines or penalties accrued or paid by the Oakland Unified School District during a specified period and deduct that amount from the amount owed by the school district for the emergency loan. The bill would also require the Controller to deduct \$18,500,000 dollars from the amount owed by the Oakland Unified School District on the outstanding principal balance of the emergency loan.~~

(2) This bill would make legislative findings and declarations as to the necessity of a special statute for the Oakland Unified School District.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 41320.1 of the Education Code is~~
- 2 ~~amended to read:~~
- 3 ~~41320.1. Acceptance by the district of the apportionments made~~
- 4 ~~pursuant to Section 41320 constitutes the agreement by the district~~
- 5 ~~to all of the following conditions:~~
- 6 ~~(a) The Superintendent of Public Instruction shall appoint a~~
- 7 ~~trustee who has recognized expertise in management and finance~~
- 8 ~~and may employ, on a short-term basis, any staff necessary to assist~~
- 9 ~~the trustee, including, but not limited to, certified public~~
- 10 ~~accountants, as follows:~~
- 11 ~~(1) The expenses incurred by the trustee and any necessary staff~~
- 12 ~~shall be borne by the district.~~
- 13 ~~(2) The Superintendent shall establish the terms and conditions~~
- 14 ~~of the employment, including the remuneration of the trustee. The~~

1 trustee shall serve at the pleasure of, and report directly to, the
2 Superintendent.

3 (3) ~~The trustee, and any necessary staff, shall serve until the~~
4 ~~loan authorized by this section is repaid, the district has adequate~~
5 ~~fiscal systems and controls in place, and the Superintendent has~~
6 ~~determined that the district's future compliance with the fiscal plan~~
7 ~~approved for the district under Section 41320 is probable. The~~
8 ~~Superintendent shall notify the county superintendent of schools,~~
9 ~~the Legislature, the Department of Finance, and the Controller no~~
10 ~~less than 60 days prior to the time that the Superintendent expects~~
11 ~~these conditions to be met.~~

12 (4) ~~Before the district repays the loan, including interest, the~~
13 ~~recipient of the loan shall select an auditor from a list established~~
14 ~~by the Superintendent and the Controller to conduct an audit of its~~
15 ~~fiscal systems. If the fiscal systems are deemed to be inadequate,~~
16 ~~the Superintendent may retain the trustee until the deficiencies are~~
17 ~~corrected. The cost of this audit and any additional cost of the~~
18 ~~trustee shall be borne by the district.~~

19 (5) ~~Notwithstanding any other law, all reports submitted to the~~
20 ~~trustee are public records.~~

21 (6) ~~To facilitate the appointment of the trustee and the~~
22 ~~employment of any necessary staff, for the purposes of this section,~~
23 ~~the Superintendent is exempt from the requirements of Article 6~~
24 ~~(commencing with Section 999) of Chapter 6 of Division 4 of the~~
25 ~~Military and Veterans Code and Part 2 (commencing with Section~~
26 ~~10100) of Division 2 of the Public Contract Code.~~

27 (7) ~~Notwithstanding any other law, the Superintendent may~~
28 ~~appoint an employee of the department to act as trustee for up to~~
29 ~~the duration of the trusteeship. The salary and benefits of that~~
30 ~~employee shall be established by the Superintendent and paid by~~
31 ~~the school district. During the time of appointment, the employee~~
32 ~~is an employee of the school district, but shall remain in the same~~
33 ~~retirement system under the same plan as if the employee had~~
34 ~~remained in the department. Upon the expiration or termination~~
35 ~~of the appointment, the employee shall have the right to return to~~
36 ~~his or her former position, or to a position at substantially the same~~
37 ~~level as that position, with the department. The time served in the~~
38 ~~appointment shall be counted for all purposes as if the employee~~
39 ~~had served that time in his or her former position with the~~
40 ~~department.~~

~~(b) The trustee appointed by the Superintendent shall monitor and review the operation of the district. During the period of his or her service, the trustee may stay or rescind any action of the local district governing board that, in the judgment of the trustee, may affect the financial condition of the district. The Superintendent may establish timelines and prescribe formats for reports and other materials to be used by the trustee to monitor and review the operations of the district. The trustee shall approve or reject all reports and other materials required from the district as a condition of receiving the apportionment. The Superintendent, upon the recommendation of the trustee, may reduce any apportionment to the district in an amount up to two hundred dollars (\$200) per day for each late or unacceptable report or other material required under Part 24 (commencing with Section 41000); and shall report to the Legislature any failure of the district to comply with the requirements of this section. If the Superintendent determines, at any time, that the fiscal plan approved for the district under Section 41320 is unsatisfactory, he or she may modify the plan as necessary, and the district shall comply with the plan as modified.~~

~~(c) At the request of the Superintendent, the Controller shall transfer to the department, from any apportionment to which the district would otherwise have been entitled pursuant to Section 42238, the amount necessary to pay the expenses incurred by the trustee and any associated costs incurred by the county superintendent of schools.~~

~~(d) (1) For the fiscal year in which the apportionments are disbursed and each year thereafter, the Controller, or his or her designee, shall cause an audit to be conducted of the books and accounts of the district, in lieu of the audit required by Section 41020. At the Controller's discretion, the audit may be conducted by the Controller, his or her designee, or an auditor selected by the district and approved by the Controller. The costs of these audits shall be borne by the district. These audits shall be required until the Controller determines, in consultation with the Superintendent, that the district is financially solvent, but in no event earlier than one year following the implementation of the plan or later than the time the apportionment made is repaid, including interest. In addition, the Controller shall conduct quality control reviews pursuant to subdivision (c) of Section 14504.2.~~

1 ~~(2) The audit required pursuant to this subdivision shall only~~
2 ~~be conducted to assist the administrator in ensuring that the district~~
3 ~~returns to financial solvency. The audit shall not be conducted in~~
4 ~~a manner that would impose an additional financial burden on the~~
5 ~~district.~~

6 ~~(e) For all purposes of errors and omissions liability insurance~~
7 ~~policies, the trustee appointed pursuant to this section is an~~
8 ~~employee of the local education agency to which he or she is~~
9 ~~assigned. For the purpose of workers' compensation benefits, the~~
10 ~~trustee is an employee of the local education agency to which he~~
11 ~~or she is assigned, except that a trustee appointed pursuant to~~
12 ~~paragraph (7) of subdivision (a) is an employee of the department~~
13 ~~for that purpose.~~

14 ~~(f) Except for an individual appointed by the Superintendent as~~
15 ~~trustee pursuant to paragraph (7) of subdivision (a), the~~
16 ~~state-appointed trustee is a member of the State Teachers'~~
17 ~~Retirement System, if qualified, for the period of service as trustee,~~
18 ~~unless the trustee elects in writing not to become a member. A~~
19 ~~person who is a member or retirant of the State Teachers'~~
20 ~~Retirement System at the time of appointment shall continue to~~
21 ~~be a member or retirant of the system for the duration of the~~
22 ~~appointment. If the trustee chooses to become a member or is~~
23 ~~already a member, the trustee shall be placed on the payroll of the~~
24 ~~school district for the purposes of providing appropriate~~
25 ~~contributions to the system. The Superintendent may also require~~
26 ~~that any individual appointed as trustee pursuant to paragraph (7)~~
27 ~~of subdivision (a) be placed on the payroll of the school district~~
28 ~~for purposes of remuneration, other benefits, and payroll~~
29 ~~deductions. For the purpose of workers' compensation benefits,~~
30 ~~the state-appointed trustee is deemed an employee of the local~~
31 ~~education agency to which he or she is assigned, except that a~~
32 ~~trustee who is appointed pursuant to paragraph (7) of subdivision~~
33 ~~(a) is an employee of the department for that purpose.~~

34 ~~SEC. 2.~~

35 ~~SECTION 1.~~ Section 41344.45 is added to the Education Code,
36 ~~immediately following Section 41344.4, to read:~~

37 ~~41344.45. (a) The Oakland Unified School District shall be~~
38 ~~released from any requirement to be subject to, or to pay for, fines~~
39 ~~or penalties imposed as a result of audits performed pursuant to~~
40 ~~subdivision (d) of Section 9 of Chapter 14 of the Statutes of 2003,~~

1 for any fiscal year that falls between June 16, 2003, and June 28,
2 2009 ~~the 2003–04 to 2008–09 fiscal years~~, inclusive.

3 (b) ~~Notwithstanding any other law, the Controller shall do all~~
4 ~~of the following:~~

5 (1) ~~Calculate the total amount of any audit fines or penalties~~
6 ~~accrued or paid by the Oakland Unified School District as a result~~
7 ~~of the audits performed pursuant to subdivision (d) of Section 9~~
8 ~~of Chapter 14 of the Statutes of 2003 during the period of June 16,~~
9 ~~2003, to June 28, 2009, inclusive, and deduct that amount from~~
10 ~~the amount owed by the Oakland Unified School District for the~~
11 ~~loan that it received pursuant to subdivision (a) of Section 9 of~~
12 ~~Chapter 14 of the Statutes of 2003.~~

13 (2) ~~Deduct eighteen million five hundred thousand dollars~~
14 ~~(\$18,500,000) from the amount owed by the Oakland Unified~~
15 ~~School District on the outstanding principal balance of the loan~~
16 ~~that it received pursuant to subdivision (a) of Section 9 of Chapter~~
17 ~~14 of the Statutes of 2003.~~

18 ~~SEC. 3.~~

19 *SEC. 2.* The Legislature finds and declares that, due to the
20 unique circumstances relating to the fiscal emergency in the
21 Oakland Unified School District, a general statute cannot be made
22 applicable within the meaning of Section 16 of Article IV of the
23 California Constitution, and the enactment of ~~Section 41344.45~~
24 ~~of the Education Code by Section 2 of this act as a~~ *this* special
25 statute is therefore necessary.